

(2) *Reporting on substantial U.S. owners.* A withholding agent that receives information about any substantial U.S. owners of an NFFE that is not an excepted NFFE must report information about the NFFE's substantial U.S. owners in accordance with § 1.1474-1(i)(2). See § 1.1471-4(d) for the reporting requirements of a participating FFI with respect to the substantial U.S. owners of account holders that are NFFEs.

(f) *Effective/applicability date.* This section generally applies January 28, 2013. For other dates of applicability, see § 1.1472-1(b).

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#### § 1.1473-1 Section 1473 definitions.

(a) *Definition of withholdable payment—*(1) *In general.* Except as otherwise provided in this paragraph (a) and § 1.1471-2(b) (regarding grandfathered obligations), the term *withholdable payment* means—

(i) Any payment of U.S. source FDAP income (as defined in paragraph (a)(2) of this section); and

(ii) For any sales or other dispositions occurring after December 31, 2016, any gross proceeds from the sale or other disposition (as defined in paragraph (a)(3)(i) of this section) of any property of a type that can produce interest or dividends that are U.S. source FDAP income.

(2) *U.S. source FDAP income defined—*

(i) *In general—*(A) *FDAP income defined.* For purposes of chapter 4, the term *FDAP income* means fixed or determinable annual or periodic income that is described in § 1.1441-2(b)(1) or § 1.1441-2(c) (excluding income described in paragraph (a)(2)(vi) of this section or § 1.1441-2(b)(2) (such as gains derived from the sale of certain property)) and including the types of income enumerated in paragraphs (a)(2)(iii) through (v) of this section.

(B) *U.S. source.* The term *U.S. source* means derived from sources within the United States. A payment is derived from sources within the United States if it is income treated as derived from sources within the United States under sections 861 through 865 and other relevant provisions of the Code. In the case of a payment of FDAP income for which the source cannot be determined

at the time of payment, see § 1.1471-2(a)(5).

(C) *Exceptions to withholding on U.S. source FDAP income not applicable under chapter 4.* Except as otherwise provided in paragraph (a)(4) of this section, no exception to withholding on U.S. source FDAP income for purposes other than chapter 4 applies for purposes of determining whether a payment of such income is a withholdable payment under chapter 4. Thus, for example, an exclusion from an amount subject to withholding under § 1.1441-2(a) or an exclusion from taxation under section 881 does not apply for purposes of determining whether such income constitutes a withholdable payment.

(ii) *Special rule for certain interest.* Interest that is described in section 861(a)(1)(A) (relating to interest paid by foreign branches of domestic corporations and partnerships) is treated as U.S. source FDAP income.

(iii) *Original issue discount.* The rules described in § 1.1441-2(b)(3)(ii) for determining when an amount representing original issue discount is subject to withholding for chapter 3 purposes apply for purposes of determining when original issue discount from sources within the United States is U.S. source FDAP income.

(iv) *REMIC residual interests.* U.S. source FDAP income includes an amount described in § 1.1441-2(b)(5).

(v) *Withholding liability of payee that is satisfied by withholding agent.* If a withholding agent satisfies a withholding liability arising under chapter 4 with respect to a withholdable payment from the withholding agent's own funds, the satisfaction of such liability is treated as an additional payment of U.S. source FDAP income to the payee to the extent that the withholding agent's satisfaction of such withholding liability also satisfies a tax liability of the payee under section 881 or 871 with respect to the same payment, and the satisfaction of the tax liability constitutes additional income to the payee under § 1.1441-3(f) that is U.S. source FDAP income. In such case, the amount of any additional

payment treated as made by the withholding agent for purposes of this paragraph (a)(2)(v) and any tax liability resulting from such payment shall be determined under § 1.1441-3(f). See § 1.1474-6 regarding the coordination of the withholding requirements under chapters 3 and 4 in the case of a withholdable payment that is also subject to withholding under chapter 3.

(vi) *Special rule for sales of interest bearing debt obligations.* Income that is otherwise described as U.S. source FDAP income in paragraphs (a)(2)(i) through (v) of this section does not include an amount of interest accrued on the date of a sale or exchange of an interest bearing debt obligation if the sale occurs between two interest payment dates.

(vii) *Payment of U.S. source FDAP income—(A) Amount of payment of U.S. source FDAP income.* The amount of U.S. source FDAP income is the gross amount of the payment of such income, unreduced by any deductions or offsets. The rules of § 1.1441-3(b)(1) shall apply to determine the amount of an interest payment on an interest-bearing obligation. In the case of a corporate distribution, the distributing corporation or intermediary shall determine the portion of the distribution that is treated as U.S. source FDAP income under this paragraph (a)(2) in the same manner as the distributing corporation or intermediary determines the portion of the distribution subject to withholding under § 1.1441-3(c). Any portion of a payment on a debt instrument or a corporate distribution that does not constitute U.S. source FDAP income under this paragraph (a)(2) solely because of a provision other than the source rules of sections 861 through 865 shall be taken into account as gross proceeds under paragraph (a)(3) of this section. For rules regarding the determination of the amount of a payment of U.S. source FDAP income under paragraph (a)(2) of this section made in a medium other than U.S. dollars, see § 1.1441-3(e). For determining the amount of a payment of a dividend equivalent, see section 871(m) and the regulations thereunder.

(B) *When payment of U.S. source FDAP income is made.* A payment is considered made when the amount would be

includible in the income of the beneficial owner under the U.S. tax principles governing the cash method of accounting. If an FFI acts as an intermediary with respect to a payment of U.S. source FDAP income, the FFI will be treated as making a payment of such U.S. source FDAP income to the person with respect to which the FFI acts as an intermediary when it pays or credits such amount to such person. The following rules also apply for purposes of this paragraph (a)(2)(vii)(B): §§ 1.1441-2(e)(2) (regarding when a payment is considered made in the case of income allocated under section 482); 1.1441-2(e)(3) (regarding blocked income); 1.1441-2(e)(4) (regarding when a dividend is considered paid); and 1.1441-2(e)(5) (regarding when interest is considered paid if a foreign person has made an election under § 1.884-4(c)(1)).

(3) *Gross proceeds defined—(i) Sale or other disposition—(A) In general.* Except as otherwise provided in this paragraph (a)(3)(i), the term *sale or other disposition* means any sale, exchange, or disposition of property described in paragraph (a)(3)(ii) of this section that requires recognition of gain or loss under section 1001(c), determined without regard to whether the owner of such property is subject to U.S. federal income tax with respect to such sale, exchange, or disposition. The term *sale or other disposition* includes (but is not limited to) sales of securities; redemptions of stock; retirements and redemptions of indebtedness; entering into short sales; and a closing transaction under a forward contract, option, or other instrument that is otherwise a sale. Such term further includes a distribution from a corporation to the extent the distribution is a return of capital or a capital gain to the beneficial owner of the payment. Such term does not include grants or purchases of options, exercises of call options for physical delivery, transfers of securities for which gain or loss is excluded from recognition under section 1058, or mere executions of contracts that require delivery of personal property or an interest therein. For purposes of this section only, a constructive sale under section 1259 or a mark to fair market value under section 475 or 1296 is not a sale or disposition.

(B) *Special rule for sales effected by brokers.* In the case of a sale effected by a broker (with the term *effect* defined in § 1.6045-1(a)(10)), a sale means a sale as defined in § 1.6045-1(a)(9) with respect to property described in paragraph (a)(3)(ii) of this section.

(C) *Special rule for gross proceeds from sales settled by a clearing organization.* In the case of a clearing organization that settles sales and purchases of securities between members of such organization on a net basis, the gross proceeds from sales or dispositions are limited to the net amount paid or credited to a member's account that is associated with sales or other dispositions of property described in paragraph (a)(3)(ii) of this section by such member as of the time that such transactions are settled under the settlement procedures of such organization.

(ii) *Property of a type that can produce interest or dividend payments that would be U.S. source FDAP income—(A) In general.* Property is of a type that can produce interest or dividends payments that would be U.S. source FDAP income if the property is of a type that ordinarily gives rise to the payment of interest or dividends that would constitute U.S. source FDAP income, regardless of whether any such payment is made during the period such property is held by the person selling or disposing of such property. Thus, for example, stock issued by a domestic corporation is property of a type that can produce dividends from sources within the United States if a dividend from such corporation would be from sources within the United States, regardless of whether the stock pays dividends at regular intervals and regardless of whether the issuer has any plans to pay dividends or has ever paid a dividend with respect to the stock.

(B) *Contracts producing dividend equivalent payments.* In the case of any contract that results in the payment of a dividend equivalent as defined in section 871(m) and the regulations thereunder (including as part of a termination payment), such contract shall be treated as property that is described in paragraph (a)(3)(ii)(A) of this section, without regard to whether the taxpayer is a foreign person subject to U.S. federal income tax with respect to

such transaction. To the extent that the proceeds from a termination payment include the payment of a dividend equivalent, the gross amount of such proceeds will not include the amount of such dividend equivalent.

(C) *Regulated investment company distributions.* The amount of a distribution that is designated as a capital gain dividend under section 852(b)(3)(C) or 871(k)(2) is a payment of gross proceeds to the extent attributable to property described in paragraph (a)(3)(ii)(A) of this section.

(iii) *Payment of gross proceeds—(A) When gross proceeds are paid.* With respect to a sale that is effected by a broker that results in a payment of gross proceeds as defined in this paragraph (a)(3), the date the gross proceeds are considered paid is the date that the proceeds of such sale are credited to the account of or otherwise made available to the person entitled to the payment. If gross proceeds are paid to a financial institution or other entity acting as an intermediary for the person selling or otherwise disposing of the property, the gross proceeds are considered paid to such person on the date that the proceeds are credited to the account of or otherwise made available to such institution.

(B) *Amount of gross proceeds.* Except as otherwise provided in this paragraph (a)(3)—

(1) The amount of gross proceeds from a sale or other disposition means the total amount realized as a result of a sale or other disposition of property described in paragraph (a)(3)(ii) under section 1001(b);

(2) In the case of a sale effected by a broker, the amount of gross proceeds from a sale or other disposition means the total amount paid or credited to the account of the person entitled to the payment increased by any amount not so paid by reason of the repayment of margin loans. The broker may (but is not required to) take commissions with respect to the sale into account in determining the amount of gross proceeds;

(3) In the case of a corporate distribution, the amount treated as gross proceeds excludes the amount described in paragraph (a)(2)(vii)(A) of this section

that is treated as U.S. source FDAP income;

(4) In the case of a sale of an obligation described in paragraph (a)(2)(vi), gross proceeds includes any interest accrued between interest payment dates; and

(5) In the case of a sale, retirement, or redemption of a debt obligation, gross proceeds excludes the amount of original issue discount treated as U.S. source FDAP income under paragraph (a)(2)(iii) of this section.

(4) *Payments not treated as withholdable payments.* The following payments are not withholdable payments under paragraph (a)(1) of this section—

(i) *Certain short-term obligations.* A payment of interest or original issue discount on short-term obligations described in section 871(g)(1)(B)(i).

(ii) *Effectively connected income.* Any payment to the extent it gives rise to an item of income that is taken into account under section 871(b)(1) or 882(a)(1) for the taxable year. An item of income is taken into account under section 871(b)(1) or 882(a)(1) when the income is (or is deemed to be) effectively connected with the conduct of a trade or business in the United States and is includible in the beneficial owner's gross income for the taxable year. An amount of income shall not be treated as taken into account under section 871(b)(1) or 882(a)(1) if the income is (or is deemed to be) effectively connected with the conduct of a trade or business in the United States and the beneficial owner claims an exception from tax under an income tax treaty because the income is not attributable to a permanent establishment in the United States.

(iii) *Excluded nonfinancial payments.* Payments for the following: services (including wages and other forms of employee compensation (such as stock options)), the use of property, office and equipment leases, software licenses, transportation, freight, gambling winnings, awards, prizes, scholarships, and interest on outstanding accounts payable arising from the acquisition of goods or services. Notwithstanding the preceding sentence and except as otherwise provided in § 1.1471-2(b) (regarding grandfathered obliga-

tions), withholdable payments include: payments in connection with a lending transaction (including loans of securities), a forward, futures, option, or notional principal contract, or a similar financial instrument; premiums for insurance contracts or annuity contracts; amounts paid under cash value insurance or annuity contracts; dividends; interest (including substitute interest described in § 1.861-2(a)(7)) other than interest described in the preceding sentence; investment advisory fees; custodial fees; and bank or brokerage fees.

(iv) *Gross proceeds from sales of excluded property.* Gross proceeds from the sale or other disposition of any property that can produce U.S. source FDAP income if all such U.S. source FDAP income would be excluded from the definition of withholdable payment under paragraphs (a)(4)(i) through (iii) of this section.

(v) *Fractional shares.* Payments arising in sales described in § 1.6045-1(c)(3)(ix).

(vi) *Offshore payments of U.S. source FDAP income prior to 2017 (transitional).* A payment of U.S. source FDAP income made prior to January 1, 2017, with respect to an offshore obligation if such payment is made by a person that is not acting as an intermediary with respect to the payment. The exception for offshore payments of U.S. source FDAP income provided in the preceding sentence shall not apply, however, in the case of a flow-through entity that has a residual withholding requirement with respect to its partners, owners, or beneficiaries under § 1.1471-2(a)(2)(ii). For purposes of this paragraph (a)(4)(vi), an intermediary includes a person that acts as a qualified securities lender as defined for purposes of chapter 3.

(5) *Special payment rules for flow-through entities, complex trusts, and estates—(i) In general.* This paragraph (a)(5) provides special rules for a flow-through entity, complex trust, or estate to determine when such entity must treat U.S. source FDAP income as having been paid by such entity to its partners, owners, or beneficiaries (as applicable depending on the type of entity).

(ii) *Partnerships*. An amount of U.S. source FDAP income is treated as being paid to a partner under rules similar to the rules prescribing when withholding is required for chapter 3 purposes as described in § 1.1441-5(b)(2)(i)(A).

(iii) *Simple trusts*. An amount of U.S. source FDAP income is treated as being paid to a beneficiary of a simple trust under rules similar to the rules prescribing when withholding is required for chapter 3 purposes as described in § 1.1441-5(b)(2)(ii).

(iv) *Complex trusts and estates*. An amount of U.S. source FDAP income is treated as paid to a beneficiary of a complex trust or estate under rules similar to the rules prescribing when withholding is required for chapter 3 purposes as described in § 1.1441-5(b)(2)(iii).

(v) *Grantor trusts*. If an amount of U.S. source FDAP income is paid to a grantor trust, a person treated as an owner of all or a portion of such trust is treated as having been paid such income by the trust at the time it is received by or credited to the trust or portion thereof.

(vi) *Special rule for an NWP or NWT*. In the case of a partnership, simple trust, or complex trust that is an NWP or NWT, the rules described in paragraphs (a)(5)(ii) and (iii) of this section shall not apply, and U.S. source FDAP income is treated as paid to the partner or beneficiary at the time the income is paid to the partnership or trust, respectively.

(vii) *Special rule for determining when gross proceeds are treated as paid to a partner, owner, or beneficiary of a flow-through entity*. [Reserved]

(6) *Reporting of withholdable payments*. See § 1.1474-1(c) and (d) for a description of the income tax return and information reporting requirements applicable to a withholding agent that has made a withholdable payment.

(7) *Example. Satisfaction of payee's chapter 4 liability by withholding agent*. Recalcitrant account holder (RA) is entitled to receive a payment of \$100 of U.S. source interest from withholding agent, WA. The payment is subject to withholding under chapter 4, but is not subject to withholding under section 1442, and RA has no substantive tax liability under section 881 with respect to this payment. WA pays the full \$100 to RA and, after

the date of payment, pays the \$30 of tax due under chapter 4 to the IRS from its own funds. Because no underlying tax liability of RA is satisfied, and further because WA and RA did not execute any agreement for WA to pay this tax and WA did not have an obligation to pay this tax apart from the requirements of chapter 4, WA's payment of the tax does not give rise to a deemed payment of U.S. source FDAP income to RA under paragraph (a)(2)(v) of this section. Thus, WA is not required to pay any additional tax with respect to this payment for purposes of chapter 4.

(b) *Substantial U.S. owner*—(1) *Definition*. Except as otherwise provided in paragraph (b)(4) or (5) of this section, the term *substantial United States owner* (or *substantial U.S. owner*) means:

(i) With respect to any foreign corporation, any specified U.S. person that owns, directly or indirectly, more than 10 percent of the stock of such corporation (by vote or value);

(ii) With respect to any foreign partnership, any specified U.S. person that owns, directly or indirectly, more than 10 percent of the profits interests or capital interests in such partnership; and

(iii) In the case of a trust—

(A) Any specified U.S. person treated as an owner of any portion of the trust under sections 671 through 679; and

(B) Any specified U.S. person that holds, directly or indirectly, more than 10 percent of the beneficial interests of the trust.

(2) *Indirect ownership of foreign entities*. For purposes of determining a person's interest in a foreign entity, the following rules shall apply.

(i) *Indirect ownership of stock*. Stock of a foreign corporation that is owned directly or indirectly by an entity (other than a participating FFI, a deemed-compliant FFI (excluding an owner-documented FFI), a U.S. financial institution, a U.S. person that is not a specified U.S. person, an exempt beneficial owner, or an excepted NFFE) that is a corporation, partnership, or trust shall be considered as being owned proportionately by such entity's shareholders, partners, or, in the case of a trust, persons treated as owners under sections 671 through 679 of any portion of the trust that includes the stock, and the beneficiaries of the trust. Stock considered to be owned by

a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

(ii) *Indirect ownership in a foreign partnership or ownership of a beneficial interest in a foreign trust.* A capital or profits interest in a foreign partnership or an ownership or beneficial interest (as described in paragraph (b)(3) of this section) in a foreign trust that is owned or held directly or indirectly by an entity (other than a participating FFI, a deemed-compliant FFI (excluding an owner-documented FFI), a U.S. financial institution, a U.S. person that is not a specified U.S. person, an exempt beneficial owner, or an excepted NFFE) that is a corporation, partnership, or trust shall be considered as being owned or held proportionately by such entity's shareholders, partners, or, in the case of a trust, persons treated as owners under sections 671 through 679 of any portion of the trust that includes the partnership or beneficial trust interest, and the beneficiaries of the trust. Partnership or beneficial trust interests considered to be owned or held by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned or held by such person.

(iii) *Ownership and holdings through options.* If a specified U.S. person holds, directly or indirectly (applying the principles of paragraphs (b)(2)(i) and (ii) of this section) an option to acquire stock in a foreign corporation, a capital or profits interest in a foreign partnership, or an ownership or beneficial interest in a foreign trust, such person is considered to own the underlying equity or other ownership interest in such foreign entity for purposes of this paragraph (b). For purposes of the preceding sentence, an option to acquire such an option, and each one of a series of such options, shall be considered an option to acquire such stock or other ownership interest described in this paragraph (b)(2)(iii).

(iv) *Determination of proportionate interest.* For purposes of this paragraph (b), and except as otherwise provided in paragraph (b)(3) of this section, the determination of a person's proportionate

interest in a foreign corporation, partnership, or trust is based on all of the relevant facts and circumstances. In making this determination, any arrangement that artificially decreases a specified U.S. person's proportionate interest in any such entity will be disregarded in determining whether such person is a substantial U.S. owner. In lieu of applying the rules of this paragraph (b)(2) to determine whether an owner's proportionate interest in a foreign entity meets the 10 percent threshold described in paragraph (b)(1) of this section, the entity or its withholding agent may opt to treat the owner as a substantial U.S. owner.

(v) *Interests owned or held by a related person.* For purposes of determining whether a person has more than a 10 percent interest in a foreign corporation, foreign partnership, or foreign trust, the person must aggregate the ownership or beneficial interests in the foreign corporation, foreign partnership, or foreign trust that are owned or held by any person related to such person. For purposes of the preceding sentence, a person is related to another person if the relationship between such persons would result in a disallowance of losses under §§ 1.267(a)-1 through 1.267(f)-1 or § 1.707-1(b). Section 1.267(c)-1(a)(4) is applied as if the family of an individual includes the spouses of the members of the individual's family.

(3) *Beneficial interest in a foreign trust—(i) In general.* For purposes of paragraph (b)(1)(iii)(B) of this section, a person holds a beneficial interest in a foreign trust if such person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust. For purposes of this section, a *mandatory distribution* means a distribution that is required to be made pursuant to the terms of the trust document. A *discretionary distribution* means a distribution that is made to a person at the discretion of the trustee or a person with a limited power of appointment of such trust.

(ii) *Determining the 10 percent threshold in the case of a beneficial interest in a foreign trust.* A person will be treated as holding directly or indirectly more

than 10 percent of the beneficial interest in a foreign trust if—

(A) The beneficiary receives, directly or indirectly, only discretionary distributions from the trust and the fair market value of the currency or other property distributed, directly or indirectly, from the trust to such person during the prior calendar year exceeds 10 percent of the value of either all of the distributions made by the trust during that year or all of the assets held by the trust at the end of that year;

(B) The person is entitled to receive, directly or indirectly, mandatory distributions from the trust and the value of the person's interest in the trust, as determined under section 7520, exceeds 10 percent of the value of all the assets held by the trust; or

(C) The person is entitled to receive, directly or indirectly, mandatory distributions and may receive, directly or indirectly, discretionary distributions from the trust, and the value of the person's interest in the trust, determined as the sum of the fair market value of all of the currency or other property distributed from the trust at the discretion of the trustee during the prior calendar year to the person and the value of the person's interest in the trust as determined under section 7520 at the end of that year, exceeds either 10 percent of the value of all distributions made by such trust during the prior calendar year or 10 percent of the value of all the assets held by the trust at the end of that year.

(4) *Exceptions*—(i) *De minimis amount or value exception*. A specified U.S. person is not treated as a substantial U.S. owner if—

(A) The fair market value of the currency or other property distributed, directly or indirectly, from the trust to such specified U.S. person during the prior calendar year is \$5,000 or less and,

(B) In the case of a specified U.S. person that is entitled to receive mandatory distributions, the value of such person's interest in the trust is \$50,000 or less.

(ii) *Trusts wholly owned by certain U.S. persons*. A trust that is treated as owned only by U.S. persons under sections 671 through 679 is not required to

treat any of its beneficiaries as substantial U.S. owners.

(5) *Special rule for certain financial institutions*. In the case of any financial institution described in §1.1471-5(e)(1)(iii) or (iv) (referring to investment entities and specified insurance companies), this section shall be applied by substituting “0 percent” for “10 percent” in each place that it appears. Additionally, in the case of a financial institution described in §1.1471-5(e)(1)(iii) that is a trust, the rules of paragraph (b)(3) and (4) of this section (referring to beneficial interests in a trust) shall be applied by substituting “calendar year” for “prior calendar year” in each place that it appears.

(6) *Determination dates for substantial U.S. owners*. A foreign entity may make the determination of whether it has one or more direct or indirect substantial U.S. owners as of the last day of such entity's accounting year or as of the date on which such foreign entity provides the documentation described in §1.1471-3(d) to the withholding agent for which such determination is required to be made. See §1.1471-4(c) for when a participating FFI is required to obtain documentation with respect to its account holders.

(7) *Examples*. The following examples illustrate the provisions of paragraph (b) of this section:

*Example 1. Indirect ownership*. U, a specified U.S. person, owns directly 100% of the sole class of stock of F1, a foreign corporation. F1 owns directly 90% of the sole class of stock of F2, a foreign corporation, and U owns directly the remaining 10% of the sole class of stock of F2. F2 owns directly 10% of the sole class of stock of F3, a foreign corporation, and U owns directly 3% of the sole class of stock of F3. U is treated as owning 13% (3% directly and 10% indirectly) of the sole class of stock of F3 and 100% (10% directly and 90% indirectly) of the sole class of stock of F2 for purposes of this paragraph (b). U is a substantial U.S. owner of F1, F2, and F3.

*Example 2. Indirect ownership through entities that are specified U.S. persons*. U, a specified U.S. person, owns directly 100% of the sole class of stock of US1, a U.S. corporation that is a specified U.S. person. US1 owns directly 100% of the sole class of stock of US2, a U.S. corporation that is a specified U.S. person. US2 owns directly 15% of the sole class of stock of FC, a foreign corporation. For purposes of this paragraph (b), U, US1, and US2 are all substantial U.S. owners of FC.

*Example 3. Determining the 10% threshold in the case of a beneficial interest in a foreign trust.* U, a U.S. citizen, holds an interest in FT1, a foreign trust, under which U may receive discretionary distributions from FT1. U also holds an interest in FT2, a foreign trust, and FT2, in turn, holds an interest in FT1 under which FT2 may receive discretionary distributions from FT1. U receives \$25,000 from FT1 in Year 1. FT2 receives \$120,000 from FT1 in Year 1 and distributes the entire amount to its beneficiaries in Year 1. The distribution from FT1 is FT2's only source of income and FT2's distributions in Year 1 total \$120,000. U receives \$40,000 from FT2 in Year 1. FT1's distributions in Year 1 total \$750,000. U's discretionary interest in FT1 is valued at \$65,000 at the end of Year 1 and therefore does not meet the 10% threshold as determined under paragraph (b)(3)(ii)(A). U's discretionary interest in FT2, however, is valued at \$40,000 at the end of Year 1 and therefore meets the 10% threshold as determined under paragraph (b)(3)(ii)(A).

*Example 4. Determining ownership (determination date).* F, a foreign corporation that is an NFFE, has a calendar year accounting year. On December 31 of Year 1, U, a specified U.S. person, owns 12% of the sole class of outstanding stock of F. In March of Year 2, F redeems a portion of U's stock and reduces U's ownership of F to 9%. In May of Year 2, F opens an account with P, a participating FFI, and delivers to P the documentation required under § 1.1471-3(d). At the time F opens its account with P, U is the only specified U.S. person that directly or indirectly owns stock in F. Because of the redemption, U's interest in F is 9% on the date F opens its account with P. Pursuant to paragraph (b)(6) of this section, F may determine whether it has a substantial U.S. owner as of the date it provides the documentation required under § 1.1471-3(d) to P, which would be the day it opens the account. As a result, F may indicate in its § 1.1471-3(d) documentation that it has no substantial U.S. owners.

(c) *Specified U.S. person.* The term *specified United States person* (or *specified U.S. person*) means any U.S. person other than—

(1) A corporation the stock of which is regularly traded on one or more established securities markets, as described in § 1.1472-1(c)(1)(i);

(2) Any corporation that is a member of the same expanded affiliated group as a corporation described in § 1.1472-1(c)(1)(i);

(3) Any organization exempt from taxation under section 501(a) or an individual retirement plan as defined in section 7701(a)(37);

(4) The United States or any wholly owned agency or instrumentality thereof;

(5) Any State, the District of Columbia, any U.S. territory, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing;

(6) Any bank as defined in section 581;

(7) Any real estate investment trust as defined in section 856;

(8) Any regulated investment company as defined in section 851 or any entity registered with the Securities Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-64);

(9) Any common trust fund as defined in section 584(a);

(10) Any trust that is exempt from tax under section 664(c) or is described in section 4947(a)(1);

(11) A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any State;

(12) A broker; and

(13) Any tax exempt trust under a section 403(b) plan or section 457(g) plan.

(d) *Withholding agent*—(1) *In general.* Except as provided in this paragraph (d), the term *withholding agent* means any person, U.S. or foreign, in whatever capacity acting, that has the control, receipt, custody, disposal, or payment of a withholdable payment or foreign passthru payment.

(2) *Participating FFIs and registered deemed-compliant FFIs as withholding agents.* The term *withholding agent* includes a participating FFI that has the control, receipt, custody, disposal, or payment of a passthru payment (as defined in § 1.1471-5(h)). The term *withholding agent* also includes a registered deemed-compliant FFI to the extent that such FFI is required to withhold on a passthru payment as part of the conditions for maintaining its status as a deemed-compliant FFI under § 1.1471-5(f)(1)(ii). For the withholding requirements of a participating FFI, including the requirement to withhold

with respect to limited branches and limited FFIs that are in the same expanded affiliated group as the participating FFI, see §§ 1.1471-4(b) and 1.1472-1(a).

(3) *Grantor trusts as withholding agents.* The term withholding agent includes a grantor trust with respect to a withholdable payment or a foreign passthru payment (in the case of a grantor trust that is a participating FFI) made to a person treated as an owner of the trust under sections 671 through 679. For purposes of determining when a payment is treated as made to such a person, see § 1.1473-1(a)(5)(v).

(4) *Deposit and return requirements.* See § 1.1474-1(b) for a withholding agent's requirement to deposit any tax withheld, and § 1.1474-1(c) and (d) for the requirement to file income tax and information returns (including the special allowance in § 1.1474-1(b)(2) for participating FFIs with respect to dormant accounts).

(5) *Multiple withholding agents.* When several persons qualify as a withholding agent with respect to a single payment, only one tax is required to be withheld and deposited. See § 1.1474-1(a). A person who, as a nominee described in § 1.6031(c)-1T, has furnished to a partnership all of the information required to be furnished under § 1.6031(c)-1T(a) shall not be treated as a withholding agent if the person has notified the partnership that it is treating the provision of information to the partnership as a discharge of its obligations as a withholding agent.

(6) *Exception for certain individuals.* An individual is not a withholding agent with respect to a withholdable payment made by the individual outside the course of such individual's trade or business (including as an agent with respect to making or receiving such payment).

(e) *Foreign entity.* The term *foreign entity* means any entity that is not a U.S. person and includes a territory entity.

(f) *Effective/applicability date.* This section generally applies January 28, 2013. For other dates of applicability see §§ 1.1473-1(a)(1)(ii) and 1.1473-1(a)(4)(vi).

[T.D. 9610, 78 FR 5981, Jan. 28, 2013]

**§ 1.1474-1 Liability for withheld tax and withholding agent reporting.**

(a) *Payment and returns of tax withheld—(1) In general.* A withholding agent is required to deposit any tax withheld pursuant to chapter 4 as provided under paragraph (b) of this section and to make the returns prescribed by paragraphs (c) and (d) of this section. When several persons qualify as withholding agents with respect to a single payment, only one tax is required to be withheld and deposited.

(2) *Withholding agent liability.* A withholding agent that is required to withhold with respect to a payment under § 1.1471-2(a), 1.1471-4(b) (in the case of a participating FFI), or 1.1472-1(b) but fails either to withhold or to deposit any tax withheld with an authorized financial institution, as required under paragraph (b) of this section, is liable for the amount of tax not withheld and deposited.

(3) *Use of agents—(i) In general.* Except as otherwise provided in this paragraph (a)(3), a withholding agent may authorize an agent to fulfill its obligations under chapter 4. The acts of an agent of a withholding agent (including the receipt of withholding certificates, the payment of amounts subject to withholding, the withholding and deposit of tax withheld, and the reporting required on the relevant form) are imputed to the withholding agent on whose behalf it is acting.

(ii) *Authorized agent.* An agent is authorized only if—

(A) There is a written agreement between the withholding agent and the person acting as agent;

(B) A Form 8655, "Reporting Agent Authorization," is filed with the IRS if the agent (including any sub-agent) is acting as a reporting agent for filing Form 1042 or making tax deposits and payments;

(C) Books and records and relevant personnel of the agent (including any sub-agent) are available to the withholding agent (on a continuous basis, including after termination of the relationship) in order to evaluate the withholding agent's compliance with the provisions of chapter 4; and

(D) The withholding agent remains fully liable for the acts of its agent (or any sub-agent) and does not assert any